



Submission to:

**Parliament of Australia Joint  
Committee on Corporations and  
Financial Services**

**Inquiry into regulation of property  
investment advice**

**Centre for Credit and  
Consumer Law, Griffith University**

**February 2005**

## **1. About the Centre for Credit and Consumer Law**

The Centre for Credit and Consumer Law is an academic centre, hosted by Griffith University Law School.

The Centre for Credit and Consumer Law was established in March 2004 to be a source of expertise, and a centre of excellence, on credit and consumer law issues, and it has the overall objective of promoting the attainment of a fairer, safer, and more efficient marketplace, particularly for low income and vulnerable consumers.

The Centre for Credit and Consumer Law is funded by the Queensland Government's Consumer Credit Fund (administered by the Office of Fair Trading) and Griffith University.

## **2. About this Submission**

In October 2004 we made a submission to the Mistrrial Council for Consumer Affairs ("MCCA") Working Party in response to the Property Investment Advice Discussion Paper. In that submission we argued that the provision of property investment advice should be included in the financial services regulatory framework. Our position with respect to the urgent need for regulation of the property investment advice industry has not altered since making that submission. Our submission to the MCCA working party appears as Appendix One. We reiterate the comments made in that submission with respect to the Joint Committee's Inquiry into the regulation of property investment. This submission is a summary of our submission to the MCCA, specifically directed to the terms of reference of the inquiry, and we urge that both sets of submissions be taken into account in the Committee's deliberations.

## **3. Introduction**

The investor activity in the real estate market since the onset of the property boom is well documented. Many investors believe that property is a "safe investment" and one that they understand, when compared to, for example, shares. The boom in the real estate market coupled with the familiar and tangible nature of real property may be one reason that some of the outrageous claims made by property investments advisors are accepted as being credible.

The risks for consumers in acting on poor property investment advice are innumerable and include the payment of extremely high fees for information seminars that do not live up to their claims, receiving poor investment advice, and, if equity in the family home is used – loss of the family home. At a minimum, investors may also be placed in a financial position that is worse than before taking the investment advice, which have cost tens or hundreds of thousands of dollars.

Given the history of cases against property investment advisors, such as Henry Kaye, and the continued unregulated activity of property investment advisors, there are

clear and unresolved consumer protection issues in this market. As consumers are extremely vulnerable to fraudulent, negligent or inappropriate provision of advice and there is a significant risk of the loss of large amounts of money or even the loss of the major asset of the family home, we strongly support government intervention in relation to the property investment industry by the inclusion of the provision of property investment advice in the financial services regulatory framework.

We have addressed those issues raised in the Terms of Reference that predominately relate to the appropriate objectives and government interventions in the property investment advice industry.

#### **4. Terms of Reference (a)**

***The effectiveness of the current regulation (including Trade Practices Act 1974, the ASIC Act and Corporations Act 2001) of the property investment advice industry in protecting consumers.***

It does not appear, from the continuous and blatant, misrepresentations, inappropriate advice and other extremely questionable practices by some, that the current regulatory framework provides adequate levels of consumer protection with respect to property investment advice.

The current regulatory framework only regulates part, but not all, of the activities undertaken within the property investment advice industry. This means that many of the harmful activities of property investment marketeers and advisors are not caught within the current regulatory framework. This issue needs to be addressed urgently by the legislature so that all harmful, or potentially harmful, activities are covered within the regulatory framework.

In the present regulatory environment the Australian Consumer and Competition Authority and the Australian Securities and Investment Commission are only able to prosecute the most blatant of cases, many of which involve fraud. The time that it takes the regulators to conduct investigations into these matters is significant and labour intensive due to the nature of the regulations. In many instances the action against the “property investment advisor” is only able to be launched well after the damage to consumer/s has been done and there is little hope of an award of damages being able to be met.

As the current regulatory framework does not establish barriers to entry nor provide minimum standards of advice the consumer protective mechanisms are based on deterrence. In order for deterrence to be effective it is essential that the industry participants have an interest in an ongoing presence in the marketplace. This is not the case with some participants in the property investment advice industry. Further, a state based system on regulation is not adequately able to respond with the necessary swiftness to complaints in relation to cross border activities and a federal system is required.

We further refer to point 4 addressing question 11 of the MCCA Working Party Discussion Paper in relation to this issue.

## 5. Terms of Reference (b)

*Allegations that property investment advisers engage in behaviour including:*

- i. characterisation of their activities (for instance, as “education seminars” in order to avoid regulation;*
- ii. habitual use of high pressure selling techniques in order to induce investment decisions;*
- iii. failure to disclose interests they may have in properties they are selling;*
- iv. failure to disclose commissions and fees associated with their services;*
- v. failure to provide appropriate disclosure of the downside risk associated with the property or financial products they recommend.*

As CCCL is not a case work centre nor involved in the investigation of complaints in relation to the activities of property investment advisers we cannot make specific comments in relation to the extent to which the above practices are engaged in by property investment advisers.

We note that these are, generally, the complaints made by consumers against property investment advisers detailed in the case reports of actions taken, for example, by the regulatory bodies, reports by case workers and in media reports.

## 6. Terms of Reference (c)

*Whether it is appropriate for property investment advisers to simultaneously sell an interest in property and financial products enabling such purchases;*

It is inappropriate for property investment advisers to simultaneously sell an interest in property and financial products enabling the purchase of that property. The coupling of real property sales and sales of financial products increases the risk of inappropriate and dangerous practices, including fraudulent valuations, inflated property prices, approval of loans on the basis of inflated values and approval of loans on less stringent criteria.

## 7. Terms of Reference (d)

*Advantages and disadvantages of possible models for reform of the property investment advice industry including:*

We strongly advocate for property investment advice to be included in the financial services regulatory regime (“FSR regime”) as it is, from the consumer’s perspective and in a practical sense, investment advice.

- i. national coverage through uniform state and territory legislation;*

Whilst specific regulation aimed at the property investment advice industry is urgently needed we advocate for Commonwealth regulation of the industry due to the transient nature of some of the members of the industry, and the similarity of the industry to the financial services market.

We are of the view that uniform state and territory legislation is inappropriate as the issue of the provision of property investment advice is of national scope as many operators in the industry provide services across jurisdictions.

Given the similarities between advice in relation to other investments and property investment advice we advocate for property investment advice to be included in the FSR regime. We are of the view that unless property investment advice is included in the FSR regime there is a risk that consumers could become confused due to the differing regulation governing extremely similar services and products.

If the uniform state and territory legislation was to include the same consumer protections as in the FSR regime then there does not appear to be a reason to justify the additional expense of establishing a new framework when property investment advice could easily be regulated with some amendment to the FSR instruments.

***ii. Commonwealth legislation; and***

The most appropriate regulation of the property investment advice industry is through Commonwealth legislation as the regulation of property investment advice should not be materially different from the regulation other investment advice. There are no other reasons (other than historical) why property investment advice should be regulated differently to the provision of other investment advice. It is therefore appropriate that the FSR regime be amended to include regulation of property investment advice. We have addressed the detail of our submission in relation to the new regime in our submission to the MCCA Discussion Paper.

***iii. a scheme of self-regulation of property investment advisers on a national basis; and***

We are strongly of the view that there is **no** role for self regulatory mechanisms in the regulation of property investment advice. The following is an extract from our submission to the MCCA Discussion Paper:-

“Self-regulation is not appropriate for this industry as there is no cohesive industry body, some firms have no interest in ongoing reputation and there are low barriers to market entry thereby permitting easy access to the market.

...

It is unlikely that any market based solution will emerge in a reasonably timely and effective form despite a competitive market as<sup>1</sup>:-

- a. there appears to be an absence of repeat transactions;
- b. there appears to be low entry and exit costs in the industry and this has led to rogue operators with few sunk costs and only moderate investments in reputational capital;
- c. there appears to be sellers that are extra jurisdictional actors. This makes redress through private law more difficult for consumers;
- d. the costs to consumers of a “bad transaction” are delayed or potentially catastrophic, making *ex post* relief an inadequate or unsatisfactory solution;
- e. in some instances the small size of a typical transaction creates a significant disincentive to seeking *ex post* relief through the courts, such as seeking redress for the admission price for a seminar.”

It is appropriate for government to regulate by way of licensing in respect of property investment advisors as such regulation will advance consumer protection by:-

- a. improving consumer appreciation of the risks associated with obtaining property investment advice; and
- b. ensuring that the cost of “search” is reduced to such a level (as the government undertakes most the searches) that a consumer has enough information with which to make appropriate decisions with respect to property investment advice?<sup>2</sup>.”

## 8. Terms of Reference (e)

### ***Whether current legal processes provide effective and easily accessible remedies to consumers in dispute with property investment advisers.***

It is not apparent that the current legal processes provide effective and easily accessible remedies to consumers. The remedies require the institution of Court proceedings, expensive in itself (as compared to the price of admission to a property investment seminar, for example), against, usually companies which may hold little or no capital in the name of the company responsible for the breach. Further, consumers, in particular somewhat experienced business people and investors, may

---

<sup>1</sup> Hadfield, Gillian, Howse, Robert & Tebilcock, M J (1997) “Rethinking Consumer Protection Policy”, Office of Consumer Affairs, Canada, viewed October 22, 2004

<http://strategis.ic.gc.ca/epic/internet/inoca-bc.nsf/en/ca00376e.html>

<sup>2</sup> Note 1

be too embarrassed to take such public action. In any event the availability of remedies to consumers does not obviate the need for front end protective mechanisms through regulation.

The ease of which a consumer may take personal action against a property investment advisor is not an effective indicator of consumer protection, nor is it an effective measure of the protection provided against deviant traders in the market. The ease of access to, and effectiveness of remedies, should be a consideration in the relatively rare (if control mechanisms are functioning properly) situation where a consumer has been wronged by a trader who has not been captured by a regulatory net. It should not be used as a measure of whether an unregulated market is functioning so as to provide adequate consumer protection.

## **9. Other comments**

We note that Queensland has sought to introduce some consumer protection in relation to property marketing by way of the provisions contained in Chapter 17 of the *Property Agents and Motor Dealers Act 2000*. These provisions do not provide adequate consumer protection because of, in particular, their lack of licensing requirements and associated obligations. Accordingly, we do not support a new national regulatory scheme being modelled on this legislation.

## **10. Contact for further information**

For further information about this submission, please contact:

Simone Watson  
Centre for Credit and Consumer Law  
Griffith University South Bank campus  
PO Box 3370  
South Brisbane Qld 4101

Tel: (07) 3875 3245  
Fax: (07) 3875 3273  
Email: [simone.watson@griffith.edu.au](mailto:simone.watson@griffith.edu.au)

# **APPENDIX ONE**



# **PROPERTY INVESTMENT ADVICE**

**Submission by the Centre for Credit and  
Consumer Law, Griffith University**

**October 2004**

## **1. About the Centre for Credit and Consumer Law**

The Centre for Credit and Consumer Law is an academic centre, hosted by Griffith University Law School.

The Centre for Credit and Consumer Law was established in March 2004 to be a source of expertise, and a centre of excellence, on credit and consumer law issues, and it has the overall objective of promoting the attainment of a fairer, safer, and more efficient marketplace, particularly for low income and vulnerable consumers.

The Centre will produce high quality research, relevant to current policy issues, and advocate for reforms to law, policies and practices from a consumer perspective. It will also form linkages with consumer, community, government and industry groups to further its overall objective.

The Centre for Credit and Consumer Law is funded by the Queensland Government's Consumer Credit Fund (administered by the Office of Fair Trading) and Griffith University.

## **2. Preliminary Comments**

The rising value of real property in Australia in the last 4 years or so has seen an increase in investor activity in this area. The tangible nature of property and the familiarity that all Australians have with real property means that property is an investment that the "average" person believes that they understand to some degree and that they will be able to exercise some control over their investment. That is to say that many people perceive real estate as a "bricks and mortar investment" and therefore "safe".

The popular media have provided regular reports of the increase of property prices and the "property boom" generally. Such reports may bring to the fore of the reader's mind that someone other than themselves owns the property that has increased by such a large percentage and that person has made money whereas they have not.

The claims made by property investment advisors are perhaps more believable in such a climate. The risks for the consumers in taking property investment advice are innumerable and include the payment of extremely high fees for information seminars that do not live up to their claims, receiving poor investment advice, if equity in the family home is used – loss of the family home, or simply being placed in a financial position that is worse than before taking the investment advice.

Given that there are clear consumer protection issues with respect to the provision of property investment advice and that the risk to consumers is extremely high we strongly support government intervention in relation to the property investment industry by the inclusion of the provision of property investment advice in the financial services regulatory framework.

We have addressed those questions raised in the Property Investment Advice Discussion Paper (“the Discussion Paper”) that predominately relate to the appropriate objectives and government interventions in the property investment advice industry.

### 3. Question 9

***Do you agree with the stated objectives of government intervention in the property investment advice market place? If not, what should government’s objectives be?***

We generally support the objectives stated in Part 7 of the Discussion Paper but say that the objectives should be more expansive so as to apply to all “at risk” consumers and to encapsulate fully the principles of consumer protection.

#### Application to all “at risk” consumers

The current objectives do not appear to provide for the protection of consumers generally. We suggest that the term “vulnerable” be replaced with “retail investors” as this group appears to be the group that is at greatest risk from the provision of inadequate property investment advice. We do not support any further sub categorisation of this group of consumers as it appears that all retail investors are vulnerable.

#### Principles of Consumer Protection

These principles are<sup>1</sup>:-

1. the right of choice;
2. the right to information;
3. the power of “exit”; and
4. the ability to seek redress in the event of service failure.

It is essential that the objectives of government intervention fully address the above issues. We will deal with each of these principles in turn:-

#### 1. Choice

Consumer choice in the market is predominantly determined by the number of providers in the marketplace. Currently the barriers to entry into the property investment advice market appear to be extremely low. This has led to competition in the market but that competition has not provided adequate consumer protection. We therefore advocate that a regulatory regime that includes licensing of property investment advisors be introduced.

A licensing regime may act as a barrier to entry into the market thereby reducing competition. Despite this, in the case of property investment advisors it would

---

<sup>1</sup>Johnston, C F (1996) ‘Consumer welfare and competition policy’, *Competition and Consumer Law Journal*, vol.3, no.3, April pp 245-260 at 250

appear that barriers to entry, including licensing, are appropriate given the risk to consumers as competition in the marketplace has not so far provided regulation of the market and consequential consumer protection.

## 2. The right to information

This appears to be an extremely difficult area in respect of the provision of property investment advice. We agree with the Discussion Paper that there appears to be an asymmetry of information from a consumer's perspective.

It is essential that this asymmetry of information is addressed by any regulatory regime. We note that the stated government objectives include that all conflicts or potential conflicts of interest be disclosed and a balanced assessment of the downside risks associated with any investment strategy be undertaken. In our view this alone is not adequate to provide consumer protection.

The disclosure requirements set out in the Discussion Paper are not satisfactory to address the existing information asymmetry but should form part of the requirements as part of a broader licensing regime. The conditions of the license and the requirements for disclosure should be substantially similar to those found in the financial services regime.

It would appear that the property investment advice market has failed<sup>2</sup> as the information available to the consumer has been limited:-

1. by a lack of consumer access to information (also known as information asymmetries; and
2. by the cost of obtaining and processing it (search costs/transaction costs).

The cost of obtaining and processing relevant information in respect of property investment advice is extremely high from the perspective of retail consumers. The information is extremely difficult to obtain, technical in nature, financially expensive and requires a great deal of time to understand and assimilate. Because of this a consumer may come to the point early on in their investigations that "they should remain rationally ignorant"<sup>3</sup>. This is compared to property investment advisors who have apprised themselves of the relevant information but do not generally fully disclose the information to the consumer, who must trust the advisor to act in their (the consumer's) best interests.

We note that authors in this area also state that "search is also likely to be limited when the consumer is experiencing emotional stress"<sup>4</sup>. It is likely that this also has an effect either through emotional stress that is created at property marketing seminars or through general stress in relation to a lack of financial security. The net effect of this is that it is likely that consumers will not usually undertake extensive

---

<sup>2</sup> Smith, R L (2000) "When competition is not enough: Consumer protection", *Australian Economic Papers*, December pp 408-425 at 408-409

<sup>3</sup> Hadfield, Gillian, Howse, Robert & Tebilcock, M J (1997) "Rethinking Consumer Protection Policy", Office of Consumer Affairs, Canada, viewed October 22, 2004

<http://strategis.ic.gc.ca/epic/internet/inoca-bc.nsf/en/ca00376e.html>

<sup>4</sup> Note 2 at 415

“searches” and therefore will not be adequately informed to make good decisions with respect to the selection of a property investment advisor, nor will they be able to evaluate the quality of the advice provided to an adequate level.

It is also unlikely that consumers will gain information in relation property investment advice through their experiences in the marketplace. One reason for this is that the provision of property investment advice is predominately classified as an “experience good”. Experience goods are those goods that are not able to be tested or tried prior to purchase<sup>5</sup>. It follows from this that it is only after the purchase of these goods that the consumer is able to determine if the product is satisfactory.

As real estate investment advice is likely to be purchased infrequently it is the case that consumer issues are more likely to arise<sup>6</sup>. Further as real estate advice may not yield results for some time, likely to be years in the future, and there is not likely to be frequent purchasers, there may also be reduced incentive for the marketer to disclose information that is only going to become known to the purchaser years in the future.

One of the effects of high search costs and asymmetric information is that it makes it difficult for a consumer to verify a supplier’s claims<sup>7</sup>. One way to overcome this issue generally and to provide validation of claims is to have the service accredited. It has been suggested that either the government or a consumer protection organisation should provide this accreditation<sup>8</sup>. We reiterate that we strongly support property investment advice being included in the financial services regulatory regime. We view accreditation of property investment advisors, by perhaps ASIC, as being an inferior regulatory method, however it is preferred to the current lack of specific regulatory control.

In order to correct the asymmetry of information and to overcome the high search costs (alleviating the need for more than a license search) it is necessary to have licensing of property investment advisors by an appropriate government regulator, in our view the ASIC.

Intervention is justified as the benefits to consumers (the reduction of significant risk) outweigh the costs associated with the intervention (extension of the financial services regulatory regime<sup>9</sup>).

We are of the view that given the complexity of the provision of investment advice generally that disclosure requirements alone (without the introduction of a licensing regime) would not be sufficient to achieve consumer protection.

#### 4.The Power Of “Exit”

It is essential that any new regulatory regime include provisions permitting a consumer to bring a contract to an end in appropriate circumstances. Such circumstances should include:-

---

<sup>5</sup> Note 2 at 413

<sup>6</sup> Note 2 at 413

<sup>7</sup> Note 2 at 419-420

<sup>8</sup> Note 2 at 420

<sup>9</sup> Note 2 at 423

- (a) for any reason during a cooling off period;
- (b) in the event of unconscionable conduct;
- (c) prior to using the services; and
- (d) if a provider is not in compliance with their license requirements or the regulations generally (this is premised on the introduction of a licensing scheme).

## 5. Redress

The objectives should be amended to include appropriate remedies and avenues for both consumer redress and for enforcement by an appropriate regulator.

The avenues for redress could include:-

- self executing remedies such as a cooling off period for contracts entered into at investment seminars for the provision of further advice products or services;
- recessionary remedies if a provider engages in false, deceptive or unconscionable business practices;
- an industry wide alternative dispute resolution scheme and/or an industry ombudsperson. It should be ensured that any scheme has the hallmarks of independence and impartiality, accessibility, predicability, fairness, efficiency, effectiveness and accountability.
- Monitoring and enforcement of regulatory requirements by the industry regulator.

## 4. Question 11

***Can the objectives of government in relation to property investment advice be realised to an acceptable level within the current regulatory framework?***

We are of the view that the objectives of government cannot be achieved within the current regulatory framework for general consumer protection. We agree with the reasons set out in the Discussion Paper in relation to this issue.

We believe that the objectives are able to be met by expanding the scope of the financial services regime to include property investment advice.

We submit that any regulation of the property investment advice market should be undertaken at the federal level rather than at the state level of government as the issues raised by the Discussion Paper are of national rather than state dimension. Some examples of this are: the ability of property investment advisors, particularly those that provide advice through seminars, to easily travel from state to state, and the ability of advisors to promote property in one state that is located in another state (for example the Oasis development located in Melbourne and heavily promoted by Henry Kaye in Sydney).

The federal system has the following advantages over a state based system:-

- there may be economies of scale in the provision and regulation of information. This includes the spreading of the costs of risk identification and regulatory development over a larger number of consumers.
- a federal regulator has the ability to identify a risk in one state, or locale, and then rapidly advise all consumers nationally of the risk;
- a federal regulator has the ability to provide a nationally uniform approach to regulation and enforcement of the regulations.

## 5. Question 12

***If a new regulatory scheme were to be introduced, what should its scope or coverage be? What activities should be covered, in respect of what types of property, and who should be protected? Do you agree that related advice about the financing of property investment should be covered in any new scheme?***

- (a) Who should be protected by the new regime ?

We agree with the proposal in part 8.2 of the Discussion Paper that the new regime should be limited to retail investors (including small businesses) as this appears to be the group at risk.

We are strongly of the view that the financial services laws should be extended to incorporate property investment advice activities and therefore we are of the view that it is appropriate to develop a retail/wholesale test.

- (b) The regulated activities

We agree with the comments made in part 8.3 of the Discussion Paper that a functionally based approach to regulation is appropriate in this area due to the fragmented and sometimes transient nature of the providers of property investment services. This is consistent with our view that property investment advice should be included in the Financial Services regulatory regime.

We are of the view that the activities regulated should be both personal investment advice and general advice as defined in the FSR Act. We further support the view that a new regime should include advice about financing of property investment as this advice poses one of the most significant risk to consumers in the retail investment sphere.

We note that the regulating of advice about financing of property investment may have implication for industries other than property investment advisors, such as finance brokers. We see this as a positive added benefit as similar consumer protection issues arise in relation to this industry.

- (c) What “property” should be covered?

We strongly support the proposal in the Discussion Paper that any new regime should cover advice to retail investors in relation to any form of real property.

## 6. Question 13

***If a new regulatory scheme were to be introduced, would a “carve out” from that scheme be justified for any particular professional or trade groups, or in respect of any particular activities? If so, why and on what terms?***

We are of the view that there should not be any regulatory “carve outs” and that all persons who provide property investment advice should be required to hold an appropriate licence (in our view an FSR licence).

Concern has been raised with respect to the width of the scope of any regulation to ensure that, for example, the mere provision of information, such as in a university setting, is not caught by the regulatory framework. To overcome this issue we support the inclusion in any new regime of similar qualifications contained in the FSR, including that a person provides property investment advice when they:-

- recommend or state an opinion that is intended to influence someone in making a decision about a real property product; or
- when their recommendation, opinion or report could reasonably be regarded as being intended to have such an influence.

Rather than a regulatory carve out for, for example real estate agents, we suggest that the current specific exclusions contained in section 766(5) of the Corporations Act could be extended to include a provision to the following effect:-

The following advice is not [financial product advice](#):

- except as may be [prescribed](#) by [the regulations](#)—any advice given by a [real](#) estate agent in the ordinary course of activities as a [real](#) estate agent, that is reasonably regarded as a necessary part of those activities.

## 7. Question 14

***Is there a role for self-regulatory or co-regulatory mechanisms in the regulation of property investment advice?***

We are of the view that there is not a role for self regulatory nor co regulatory mechanisms in the regulation of property investment.

Self-regulation is not appropriate for this industry as there is no cohesive industry body, some firms have no interest in ongoing reputation and there are low barriers to market entry thereby permitting easy access to the market.

Co regulation does not appear to be appropriate given the diverse nature of the property investment advice industry.



It is unlikely that any market based solution will emerge in a reasonably timely and effective form despite a competitive market as<sup>10</sup>:-

- a. there appears to be an absence of repeat transactions;
- b. there appears to be low entry and exit costs in the industry and this has lead to rouge operators with few sunk costs and only moderate investments in reputational capital;
- c. there appears to be sellers that are extra jurisdictional actors. This makes redress through private law more difficult for consumers;
- d. the costs to consumers of a “bad transaction” are delayed or potentially catastrophic, making *ex post* relief an inadequate or unsatisfactory solution;
- e. in some instances the small size of a typical transaction creates a significant disincentive to seeking *ex post* relief through the courts, such as seeking redress for the admission price for a seminar.

It is appropriate for government to regulate by way of licensing in respect of property investment advisors as such regulation will advance consumer protection by:-

- c. improving consumer appreciation of the risks associated with obtaining property investment advice; and
- d. ensuring that the cost of “search” is reduced to such a level (as the government undertakes most the searches) that a consumer has enough information with which to make appropriate decisions with respect to property investment advice?<sup>11</sup>.

## 8. Question 15

***If a new regulatory scheme were to be introduced, how detailed and prescriptive should the scheme be? Are there particular regulatory requirements or mechanisms that should/should not be introduced?***

We submit that it is appropriate that rather than a new regulatory scheme being introduced that the existing scheme with respect to financial services be extended to include the provision of property investment advice. We note that, in looking forward, the existence of two regulatory schemes with respect to investment advisory services (namely the existing financial services regime and a new property investment advice scheme) may cause confusion amongst consumers. One of the risks with such confusion may be that consumers erroneously form the view that property investment advice is regulated by the financial services scheme and that they are protected by it. This would heighten the risk to consumers should the property investment advice scheme not be as protective as the financial services scheme<sup>12</sup>.

In the absence of this submission being adopted we are of the view that it is appropriate that the scheme be extremely detailed and prescriptive. We are of the view that any scheme should be modelled on, and contain all of the aspects (with the necessary amendments), of the financial services regulatory regime. In particular the

---

<sup>10</sup> Note 3

<sup>11</sup> Note 3

<sup>12</sup> Note 3

scheme should include the equivalent requirements for the provision of product disclosure statements, statements of advice, financial services guides and internal and external dispute resolution schemes.

## **9. Question 16**

***What is your preferred Option among those outlined in this section? Why? Are there other or variant Options that we should consider?***

For the reasons stated above we strongly support Option 3 as this is the only Option that achieves adequate consumer protection.

We strongly advocate that property investment advice should be included in the financial services regulatory regime for the reasons set out above and for the following reasons:-

- (a) There does not appear to be any material differences between the provision of advice in relation to other investments, such as managed investment schemes dealing with property trusts, as compared to real property; and
- (b) There are no reasons (other than historical) why property investment advice should be regulated differently to the provision of other investment advice.

We note that Queensland has sought to introduce some consumer protection in relation to property marketing by way of the provisions contained in Chapter 17 of the *Property Agents and Motor Dealers Act 2000*. These provisions do not provide adequate consumer protection because of, in particular, their lack of licensing requirements and associated obligations. Accordingly, we do not support a new national regulatory scheme being modelled on this legislation.

## **10. Contact for Further Information**

For further information about this submission, please contact:

Simone Watson  
Centre for Credit and Consumer Law  
Griffith University South Bank campus  
PO Box 3370  
South Brisbane Qld 4101

Tel: (07) 3875 3245  
Fax: (07) 3875 3273  
Email: [simone.watson@griffith.edu.au](mailto:simone.watson@griffith.edu.au)